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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/612,357 07/07/00 SUN

Y J&J-1930

EXAMINER

HM12/0927

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WILLIAMSON, M

ART UNIT

PAPER NUMBER

1616

DATE MAILED:

09/27/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

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Office Action Summary

Application No.

09/612,357

Applicant(s)

Sun et al

Examiner

Williamson

Group Art Unit

1616

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on on after 7/7/01
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-20 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-20 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Applicant's Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 4+5
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

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DETAILED ACTION

Pending Claims

The pending claims in the instant application are 1-20. The only independent claim is 1.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There lacks antecedent basis for the recitation of "said hating element" deeming the claims vague and indefinite.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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A person shall be entitled to a patent unless --

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371[®] of this title before the invention thereof by the applicant for patent.

4. Claims 1-8, 10, 11 and 13-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Zhang et al. (U.S. Patent 6,245,347). Zhang et al. discloses an exothermic device for topically delivering an active agent comprising a liquid reservoir, a heating element in contact with the reservoir containing, an oxygen permeable outer layer in communication with the heating element, an active agent and water impermeable membrane separating the active agent from the heating element wherein the properties and the materials meet the instant claimed limitations of the instant claimed invention. The device is used to transdermally apply medicaments (see Abstract, col. 1, lines 14-19, Summary of the Invention and col. 12, line 11 through col. 21, line 15).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

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invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 9 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Zhang et al. (U.S. Patent 6,245,347). Zhang et al. discloses an exothermic device for topically delivering an active agent comprising a liquid reservoir, a heating element in contact with the reservoir containing, an oxygen permeable outer layer in communication with the heating element, an active agent and water impermeable membrane separating the active agent from the heating element wherein the properties and the materials meet the instant claimed limitations of the instant claimed invention. The device is used to transdermally apply medicaments (see Abstract, col. 1, lines 14-19, Summary of the Invention and col. 12, line 11 through col. 21, line 15). Zhang does not disclose that the inorganic powder is that of the instant claimed invention or that active agent is for the treatment of acne.

Zhang et al. does disclose an inorganic powder that is oxidizable giving off heat and the inorganic powders of the instant claimed invention are also known oxidizable powders known to react the same (see col. 8, line 3 through col. 9, line 11).

Additionally, Zhang et al. discloses that the exothermic device may be used to administer a variety of drugs which encompasses a drug for treating acne (see col. 20 line 65 to col. 21, line 15). Therefore, it would have been obvious to one of ordinary

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skill in the art to use the combined teaching of Zhang et al. to make the device of the instant claimed invention since the instant claimed inorganic powders are known to be functionally equivalent to that used in the art and that drugs used in the treatment of acne are suggested in the art in the absence of a factual showing to the contrary or a showing of unexpected results.

7.

Crystal Mall 1 Facsimile Center

A facsimile center has been established in Crystal Mall 1, room 7C10. The hours of operation are Monday through Friday, 8:45 AM to 4:45 PM. The telecopier number for accessing the facsimile machine is (703) 308-4556. The new location should be used in all instances when faxing any correspondence to Group 1600. Use of the new Crystal Mall 1 center will facilitate rapid delivery of materials to the Group. The faxing of all papers must conform with the notice published in the Official Gazette, 1096 O.G. 30 (November 15, 1989).

8. Any inquiry concerning this communication or earlier communication from the examiner should be directed to Michael A. Williamson whose telephone number is (703) 308-1235.



Michael A. Williamson
Patent Examiner
Group 1610

Williamson010927
September 27, 2001